

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THOMAS W. CUNNINGHAM,

Plaintiff,

v.

CIV 13-1037 JCH/KBM

DAVID FOX and KEITH SANDY,

Defendants.

ORDER FOR MARTINEZ REPORT

Under *Martinez v. Aaron*, 570 F.2d 317, 320 (10th Cir. 1978), this Court may order a defendant to investigate the incident or incidents underlying a plaintiff's lawsuit and submit a report of the investigation in order to develop a factual or a legal basis for determining whether a prisoner plaintiff has a meritorious claim. See, e.g., *Gee v. Estes*, 829 F.2d 1005, 1007 (10th Cir. 1987). A *Martinez* Report may be used in a variety of contexts, including motion for summary judgment or *sua sponte* entry of summary judgment. When a *Martinez* Report is used for summary judgment purposes, the *pro se* plaintiff must be afforded an opportunity to present conflicting evidence to controvert the facts set forth in the report. *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

Wherefore,

IT IS HEREBY ORDERED that Defendants file a *Martinez* Report in accordance with the instructions below:

1. The comprehensive *Martinez* Report(s) shall address all of Plaintiff's allegations and should include, but is not limited to: whether documents or other records pertaining to the events exist;

2. If documents and records do exist, Defendants shall include copies of them as attachments to the *Martinez* Report. Based on prior experience, the Court feels constrained to request that the attachments be arranged in a logical order. Simply copying jumbled prison records will not suffice. The Court also requests that the attachments be Bates-stamped or otherwise be clearly serially marked;
3. Defendants must provide affidavits to properly authenticate submitted documents, and may also submit other affidavits in support of the *Martinez* Report;
4. The submission of documents alone shall not be considered in compliance with this Order. Defendants shall also prepare the "report" portion of the *Martinez* Report that discusses the claims and the submissions that relate to those claims;
5. Given the detail required above, the Court will give ample time for Defendant to accomplish this task. Defendant shall file and serve the *Martinez* Report no later than November 12, 2014;
6. Plaintiff shall file a response to the *Martinez* Report (Defendant receives service electronically) no later than December 12, 2014; and
7. Defendant shall file and serve a reply, if any, not later than January 2, 2015..

THE PARTIES ARE HEREBY GIVEN NOTICE that the *Martinez* Report may be used in deciding whether to grant summary judgment on Plaintiff's claims, whether by motion or sua sponte; as such, the parties should submit whatever materials they consider relevant to Plaintiff's claims. See *Hall*, 935 F.2d 1106.


UNITED STATES CHIEF MAGISTRATE JUDGE